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Docket PHO-113

4-23-02

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re Application of:

Dees et al.

Serial No.: 09/635,276

Filed: August 9, 2000

For: Improved Topical Medicaments
And Methods For Photodynamic
Treatment Of Disease

I hereby certify that this correspondence
is being deposited with the United States
Postal Service as first class mail in an
envelope addressed to:
Commissioner for Patents, Washington,
D.C. 20231, on March 1, 2002

Richard H. Himmelfarb

Date: March 1, 2002

**DECLARATION AND POWER OF
ATTORNEY ORIGINAL PATENT APPLICATION**

As a below named inventor, I hereby declare that:

Type of Application

This declaration is for the following type application:

<u> </u>	Original
<u> </u>	Design
<u> </u>	National Stage of PCT
<u> </u>	Divisional
<u> </u>	Continuation
<u> X </u>	Continuation-in-Part (CIP)

Inventorship Identification

My residence, post office address and citizenship are as stated below next to my name, I believe I am the original, first and sole inventor (if only one name is listed below) or an original, first and joint inventor (if plural names are listed below) of the subject matter which is claimed and for which a patent is sought on the invention entitled:

IMPROVED TOPICAL MEDICAMENTS AND METHODS FOR
PHOTODYNAMIC TREATMENT OF DISEASE

Specification Identification

The specification of which:

_____ is attached hereto.

X was filed on August 9, 2000 as Application Serial
No. 09/635,276.

_____ was described and claimed in PCT International
Application No. _____ filed on
_____ and as amended under PCT
Article 19 on _____ (if any).

Acknowledgment of Review of Papers and Duty of Candor

I hereby state that I have reviewed and understand the contents of the above identified specification, including the claims, as amended by any amendment referred to above.

I acknowledge the duty in this continuation-in-part application filed under the conditions specified in 35 U.S.C. §120 which discloses and claims subject matter in addition to that disclosed in the prior copending application, acknowledges the duty to disclose information which is material to the examination of this application, including material which occurred between the filing date of the prior application and the filing date of this application, in accordance with Title 37, Code of Federal Regulations, § 1.56 which provides:

(a) A patent by its very nature is affected with a public interest. The public interest is best served, and the most effective patent examination occurs when, at the time an application is being examined, the Office is aware of and evaluates the teachings of all information material to patentability. Each individual associated with the filing and prosecution of a patent application has a duty of candor and good faith in dealing with the Office, which includes a duty to disclose to the Office all information known to that individual to be material to patentability as defined in this section. The duty to disclose information exists with respect to each pending claim until the claim is canceled or withdrawn from consideration or the application becomes abandoned. Information material to the patentability of a claim that is canceled or withdrawn from consideration need not be submitted if the information is not material to the patentability of any claim remaining under consideration in the application. There is no duty to submit information which is not material to the patentability of any existing claim. The duty to disclose all information known to be material to patentability is deemed to

be satisfied if all information known to be material to patentability of any claim issued in a patent was cited by the Office or submitted to the Office in the manner described by §§ 1.97 (b)-(d) and 1.98. However, no patent will be granted on an application in connection with which fraud on the Office was practiced or attempted or the duty of disclosure was violated through bad faith or intentional misconduct. The Office encourages applicants to carefully examine; (1) prior art cited in search reports of a foreign patent office in a counterpart application, and (2) the closest information over which individuals associated with the filing or prosecution of a patent application believe any pending claim patentably defines, to make sure that any material information contained therein is disclosed to the Office.

(b) Under this section, information is material to patentability when it is not cumulative to information already of record or being made of record in the application, and

(1) it establishes, by itself or in combination with other information, a prima facie case of unpatentability of a claim; or

(2) it refutes, or is inconsistent with, a position the applicant takes in:

(i) opposing an argument of unpatentability relied on by the Office, or

(ii) asserting an argument of patentability.

A prima facie case of unpatentability is established when the information compels a conclusion that a claim is unpatentable under the preponderance of evidence, burden-of-proof standard, giving each term in the claim its broadest reasonable construction consistent with the specification, and before any consideration is given to evidence which may be submitted in an attempt to establish a contrary conclusion of patentability.

(c) Individuals associated with the filing or prosecution of a patent application within the meaning of this section are:

(1) each inventor named in the application;

(2) each attorney or agent who prepares or prosecutes the application; and

(3) every other person who is substantively involved in the preparation or prosecution of the application and who is associated with the inventor, with the assignee or with anyone to whom there is an obligation to assign the application.

(d) Individuals other than the attorney, agent or inventor may comply with this section by disclosing information to the attorney, agent, or inventor.

— In compliance with this duty there is attached an information disclosure statement, 37 CFR 1.97.

I do not know and do not believe that the invention was ever known or used in the United States of America before my or our invention thereof; I do not know and do not believe that the invention was ever patented or described in any printed publication in any country before my or our invention thereof or more than one year prior to this application; I do not know and do not believe that the invention was in public use or on sale in the United States of America more than one year prior to this application; and the invention has not been patented or made the subject of an inventor's certificate issued before the date of this application in any country foreign to the United States of America on an application filed by me or my legal representatives or assigns more than twelve months prior to this application.

Priority Claim

I hereby claim foreign priority benefits under Title 35, United States Code, § 119 of any foreign application(s) for patent or inventor's certificate or of any PCT international application(s) designating at least one country other than the United States of America listed below and have also identified below any foreign application(s) for patent or inventor's certificate or any PCT international application(s) designating at least one country other than the United States of America filed by me on the same subject matter having a filing date before that of the application(s) of which priority is claimed.

 X No such applications have been filed.

 Such applications have been filed as follows.

**Claim For Benefit Of Earlier U.S. Application
Under 35 USC §120**

I hereby claim the benefit under Title 35, United States Code, § 120 and 37 CFR §1.78 of any U.S. application(s) for patent that is listed below.

Country	Application Number	Date of Filing	Patent	Pending As Of 8-9-00
U.S.	60/149,015	8-13-99		Yes
U.S.	09/216,787	12-21-98		Yes
U.S.	09/184,388	11-2-98		Yes
U.S.	09/130,041	8-6-98		Yes
U.S.	08/989,231	12-11-97	Yes	

Power of Attorney

As a named inventor, I hereby appoint the following attorney(s) and/or agent(s) to prosecute this application and transact all business in the Patent and Trademark Office connected therewith.

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Declaration

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

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